

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



August 13, 2003

Agenda ID #2600

TO: PARTIES OF RECORD IN APPLICATION 00-03-062

This is the proposed decision of Administrative Law Judge (ALJ) Bertram D. Patrick, previously designated as the principal hearing officer in this proceeding. It will appear on the Commission's September 4, 2003 agenda. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180 a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Since this matter is an all party settlement, we are reducing the comment period to 10 days and no reply comments will be accepted. Comments are due on August 25, 2003.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Patrick at [bdp@cpuc.ca.gov](mailto:bdp@cpuc.ca.gov). Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

ANGELA K. MINKIN by PSW  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:tcg

Attachment

Decision **PROPOSED DECISION OF ALJ PATRICK** (Mailed 8/13/2003)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric  
Company for Review of its Market Indexed  
Capital Adjustment Mechanism (MICAM).

(U 902-M)

Application 00-03-062  
(Filed March 29, 2000)

Glen J. Sullivan, Attorney at Law, Mark W. Ward  
and Lisa J. Hubbard, Sempra Energy, for San  
Diego Gas & Electric Company, applicant.  
Sam DeFrawi, Norman J. Furuta, Associate  
Counsel, and John B. Legler, for Federal  
Executive Agencies; and Christopher J.  
Warner, Andrew Niven, and Shirley A. Woo,  
Attorneys at Law, for Pacific Gas and Electric  
Company; interested parties.  
Robert C. Cagen, Attorney at Law, and William  
Thompson, for Office of Ratepayer Advocates.

**O P I N I O N****Summary**

The Commission adopts an all-party settlement agreement which modifies San Diego Gas & Electric Company's (SDG&E) Market Indexed Capital Adjustment Mechanism (MICAM). The MICAM is a formula, adopted in Decision (D.) 96-06-055, that allows automatic adjustments between SDG&E's cost of capital cases.

Specifically, the settlement: (1) modifies the MICAM "off-ramp" to trigger a cost of capital proceeding rather than a MICAM adjustment; (2) requires SDG&E to file a full cost of capital case every five years even if the off-ramp does not trigger a cost of capital case; and (3) allows SDG&E to revise its rates to pass through increased debt costs if the Internal Revenue Service revokes its tax exempt status for certain industrial development bonds.

**Procedural Summary**

In Resolution ALJ 176-3036, dated April 6, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that a hearing was necessary. Based on the record, we conclude that it is not necessary to alter the preliminary determination.

**Background**

In D.96-06-055, the Commission approved a MICAM for SDG&E, but ordered that in March 2000, the utility report on its performance and recommend any necessary modifications. On March 29, 2000, SDG&E filed the instant application (A.00-03-062) reporting on the MICAM's performance and proposed certain modifications.

The only appearances other than SDG&E were the Office of Ratepayers Advocates (ORA) and Federal Executive Agencies (FEA). Interested parties served prepared testimony on August 22, 2000. SDG&E served prepared

rebuttal testimony on September 11, 2000. Hearings were held on October 10, 2000, at which all witnesses with prepared testimony were subject to cross-examination. On October 11, 2000, SDG&E and ORA informed the Administrative Law Judge (ALJ) that they had reached agreement in principle on a settlement in the application. The ALJ left the record open to allow parties to submit a settlement.

On December 5, 2000, the Settlement Parties filed a motion for approval of a Settlement Agreement. Due to the restructuring of the electric industry that followed, the Commission deferred action on the Settlement Agreement. On August 14, 2001, the Settlement Parties filed an Amended Settlement Agreement, updating the previous agreement to reflect subsequent events. Again, the Commission deferred action on the Amended Settlement Agreement.

On June 30, 2003, the ALJ issued a ruling stating that the proposed settlement may have become moot due to the passage of time and directed parties to file comments advising him whether there is any reason the proceeding should not be closed. On July 23, 2003, the Settling Parties filed comments requesting that the Commission approve the August 14, 2001 Amended Settlement Agreement. Further, the Settlement Parties requested that the Commission approve the settlement prior to the time SDG&E has to submit its mid-October 2003 MICAM calculation for 2004.

**The Amended Settlement Agreement**

The settlement is an all-party settlement, meaning a settlement entered into by all active parties to the proceeding.<sup>1</sup> SDG&E is the applicant. The only other entities entering appearances as parties were ORA and FEA. All parties participated at the hearing held on October 10 and 11, 2000. Other entities represented at the prehearing conference were placed on the “information only” portion of the service list, and thus do not have party status.

The parties to the settlement are representative of interests normally participating in proceedings relating to cost of capital. SDG&E is the serving utility. ORA represents the interests of ratepayers in general and is always an active party in cost of capital proceedings. The FEA represents large federal agencies that are SDG&E customers. FEA has been a regular participant for many years in cost of capital proceedings involving California energy utilities, and SDG&E in particular.

A thorough evidentiary record exists for the Commission to evaluate the settlement. All parties had served prepared testimony before agreeing to the settlement. Indeed, all parties’ witnesses had testified and been subject to cross-examination by the other parties and the provisions of the settlement are supported by substantial record evidence.

**The Public Interest**

We believe that the settlement is in the public interest. It represents a reasonable balance of the competing positions on various issues and is well

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<sup>1</sup> The Commission has found that support of a settlement by all parties is a factor that weighs in favor of adoption by the Commission; see *In Re San Diego Gas & Electric Company*, D.92-12-019; 46 CalPUC2d 538 at 550-551 (1992).

within the range of possible decisional outcomes that could have resulted from our review of the merits following litigation. Likewise, each individual component of the settlement promotes the public interest. The settlement adopts ORA's position on all issues, with one exception as discussed below.

### **MICAM Off-Ramp**

The settlement replaces the current 400 basis point off-ramp with a 260 basis point off-ramp. An off-ramp permits a complete re-examination of cost of capital (i.e., a full cost of capital proceeding rather than a MICAM adjustment) when it is needed most. This occurs when a significant financial change occurs, as measured by a significant change in interest rates. Thus, a 260 basis point off-ramp trigger promotes the public interest because it is more sensitive to significant economic changes than the current off-ramp.

### **The MICAM Benchmark**

The settlement adopts ORA's position that the MICAM benchmark for calculating rates in 2001 was 7.97% based on A-rated utility bonds. SDG&E requested a MICAM benchmark of 6.73%.

SDG&E's agreement in the settlement to a benchmark of 7.97% will result in lower rates than if the Commission had adopted SDG&E's litigation position. The settlement promotes the public interest for that reason.

The parties believe that it is appropriate for purposes of making a MICAM adjustment in the year before a cost of capital proceeding, to use the recorded April-September bond rates and the last-adopted capital structure. This would not over-or-under compensate for movements in interest rates, and would be fair to both ratepayers and shareholders.

**Five-Year Cost of Capital Filing**

The settlement provides for a full cost of capital proceeding every five years. MICAM is not a substitute for a full cost of capital case. It is a means to reduce, but not eliminate, risk during the interval between full cost of capital proceedings. An absence of periodic cost of capital proceedings could cause compounding of inevitable adjustment mechanism inaccuracies. A full cost of capital proceeding every five years promotes the public interest because it allows for necessary, periodic full cost of capital reviews.

**Industrial Development Bonds**

SDG&E has certain industrial development bonds which help finance its system and operations. The Internal Revenue Service may revoke the tax exempt status of such bonds. If this occurs, the settlement permits SDG&E to revise its rates to reflect changes in the cost of these bonds. ORA believes this a reasonable compromise.

**Conclusion**

ORA's charge in this proceeding is to represent ratepayers. For the reasons set forth above, we believe that ORA has earnestly done so and the settlement represents a reasonable compromise of the issues.

Further, we conclude that the settlement conforms with the requirements of Article 13.5 of our Rules of Practice and Procedure applicable to settlements. It is in the public interest, consistent with the law, and all active parties support the settlement. No party opposes it. The settlement meets the tests we outlined in *San Diego Gas & Electric Co.* (1992) 46 CPUC2d (Decision (D.) 92-12-019) for consideration of an all party agreement in that each party is adequately represented; the interests of ratepayers have been asserted by ORA; no terms of the settlement contravene any statutory provision or any decision of this



Commission; and the settlement, together with the record in this proceeding, convey sufficient information to permit us to make an informed evaluation. The settlement should be adopted and the motion for approval of the settlement should be granted.

**Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Bertram D. Patrick in the assigned Administrative Law Judge in this proceeding.

**Comments of Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Since this matter is an all-party settlement, we are reducing the comment period to 10 days and there will be no reply comments. Comments are due on August 25, 2003.

**Findings of Fact**

1. As set forth in the settlement attached as Appendix A, the active parties in this proceeding, FEA, ORA, and SDG&E, have reached settlement on all issues.
2. No party opposes the settlement.
3. The settlement is reasonable and in the public interest because the settlement adopts ORA's position on all issues with one exception, and it represents a reasonable balance of the competing positions.

**Conclusions of Law**

1. The settlement conforms to Article 13.5 and meets the tests outlined in *San Diego Gas & Electric Co., supra* relative to all party settlement agreements.
2. The settlement should be adopted and the motion for approval of the settlement should be granted.



**O R D E R**

**IT IS ORDERED** that:

1. The Amended Settlement Agreement between San Diego Gas & Electric Company, Office of Ratepayer Advocates, and Federal Executive Agencies of the United States, attached to this order as Appendix A, is approved.

2. The motion for approval of the Amended Settlement Agreement is granted.

3. Application 00-03-062 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## **APPENDIX A**